

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	20CR371(AMD)
Plaintiff,	:	
-against-	:	United States Courthouse
VLADIMIR GEYKHMAN,	:	Brooklyn, New York
Defendant.	:	Tuesday, April 12, 2022
	:	11:00 a.m.
	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE ANN M. DONNELLY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: UNITED STATES ATTORNEY'S OFFICE
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: MIRIAM GLASER DAUERMANN, ESQ.
Assistant United States Attorney

For the Defendant: LAW OFFICE OF DONNA R. NEWMAN
20 Vesey Street, Suite 400
New York, NY 10007
BY: DONNA R. NEWMAN, ESQ.

Probation Department: Jennifer Baumann

Court Reporter: SOPHIE NOLAN
225 Cadman Plaza East/Brooklyn, NY 11201
NolanEDNY@aol.com

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1 (In open court.)

2 (The Hon. Ann M. Donnelly, presiding.)

3 (Defendant present.)

4 THE COURTROOM DEPUTY: This is criminal cause for a
5 sentencing docket number 20-CR-371, *USA versus Vladimir*
6 *Geykhman*.

7 Counsel, state your appearance. Government first.

8 MS. GLASER DAUERMANN: Miriam Glaser Dauermann for
9 the United States and I am joined by Probation Officer,
10 Jennifer Baumann. Good morning, Your Honor.

11 THE COURT: Good morning.

12 MS. NEWMAN: Good morning, Your Honor. Donna Newman
13 on behalf of Vladimir Geykhman, who is seated next to me, and
14 also in the audience is his wife. Thank you very much. I'm
15 sorry, his ex-wife. She already corrected me.

16 THE COURT: That's okay. Good afternoon.

17 This is a sentencing proceeding and Mr. Geykhman
18 pled guilty before me to the first count of a two count
19 indictment. The first count charges that between March of
20 2019 and January of 2020 -- is it Mr. Geykhman, is that what
21 it is?

22 THE DEFENDANT: Geykhman.

23 THE COURT: Geykhman, okay. That he conspired with
24 other people to execute a scheme to defraud various no-fault
25 insurers, who included Insurer Number One, and the insurers

1 were healthcare benefit programs as defined by statute and
2 that the conspiracy that he conspired to obtain money and
3 property owned by the no-fault insurers by false and
4 fraudulent pretenses and representations. That's, in general
5 terms, what he pleaded guilty to.

6 I just want to say at the outset, this question of
7 restitution is not something that we're going to resolve today
8 and so we will address the questions that I have about it at
9 the end, but I know Mr. Geykhman has been anxious about this
10 proceeding so I would like to move to that portion of it and
11 that's understandable too. I just don't want to spend a whole
12 lot of time on that. We can talk about it at the end.

13 So I'm going to go over the things that I reviewed
14 in connection with today's proceeding, the presentence
15 investigation report as well as the sentence recommendation
16 which I think both sides have; is that correct?

17 MS. GLASER DAUERMANN: Yes, Your Honor.

18 MS. NEWMAN: Yes, Your Honor.

19 THE COURT: Okay. There have been a number of --
20 there's also an addendum to the pre-sentence report from -- I
21 think from yesterday. There is also -- I have reviewed the
22 sentencing recommendation as well as all the exhibits that the
23 defense submitted on March 10th. There is also -- Ms. Newman
24 also submitted another letter on March 16th. The Government
25 submitted a sentencing memorandum and there's another letter

1 from the defense from March 20th, another sentencing
2 supplement on April 7th and another submission from Ms. Newman
3 on April 10th and, as I said, an addendum to the pre-sentence
4 report. I think I got it all.

5 Am I missing anything? No?

6 MS. GLASER DAUERMANN: I think that's correct, Your
7 Honor.

8 THE COURT: All right. Aside from this restitution
9 question, is anybody seeking an evidentiary hearing on any
10 issue?

11 MS. GLASER DAUERMANN: No, Your Honor.

12 MS. NEWMAN: Well, Your Honor, I guess it has to do
13 with the Court's rulings with respect to role. At this point
14 now, we believe we're very secure in our submissions and that
15 no additional testimony would be needed, but --

16 THE COURT: So let's see what happens.

17 MS. NEWMAN: Thank you, Your Honor, well said.

18 THE COURT: I'm just going to go over the -- I mean,
19 spoiler alert, I'm not applying that the manager -- I think
20 everybody agrees that that does not apply. It was not in the
21 plea agreement and it doesn't seem to be appropriate.

22 I mean, you're not asking that I apply it, are you?

23 MS. GLASER DAUERMANN: We're not, no.

24 THE COURT: Okay. So I did not want to spoil the
25 ending, but I do want to just go over the calculation of the

1 advisory guidelines range. There's a base offense level of
 2 six. There is an 18-point adjustment given that the fraud --
 3 the loss exceeded three-and-a-half million dollars but was
 4 less than nine-and-a-half million. There's another two points
 5 for -- on the basis that the offense involved ten or more
 6 victims. Probation added that three-point adjustment and I
 7 declined to apply that. There are two points taken away
 8 because Mr. Geykhman has accepted responsibility and then I
 9 assume that the Government is -- I think the Government is
 10 asking for that additional point to be taken off given the
 11 timely notification; is that right?

12 MS. GLASER DAUERMANN: That's correct, Your Honor.

13 THE COURT: Okay. So, that is a -- let's see, I
 14 think that leaves us with 23. Is that right?

15 MS. GLASER DAUERMANN: Yes, that's correct.

16 MS. NEWMAN: That's correct, Your Honor.

17 THE COURT: Okay. And a criminal history category
 18 of one, and for that criminal history category the guideline
 19 range is 46 to 57 months; is that correct?

20 MS. GLASER DAUERMANN: That's correct.

21 MS. NEWMAN: That is correct.

22 THE COURT: All right. So I know there were some
 23 objections to the pre-sentence report. I think I've already
 24 dealt with this three-point adjustment and there are some
 25 general objections and I think Probation made some changes

1 based on Ms. Newman's objections.

2 I don't think anything affects the guideline range;
3 is that correct?

4 MS. NEWMAN: No, Your Honor, we did object.

5 THE COURT: Sorry. I'm so sorry.

6 MS. NEWMAN: We did object to a lot of the factual
7 allegations in the PSR and as to that we still object and we
8 are -- we do believe that, because it could influence -- it
9 doesn't influence the guidelines, but it could influence the
10 Court with respect to a variance and because of that we
11 continue our objection to the factual statement of the offense
12 conduct contained in the PSR.

13 THE COURT: Just in the most general terms, was an
14 objection to the description of him as playing sort of a
15 larger role than it's your position that he took; is that
16 correct?

17 MS. NEWMAN: That is correct. Just generally,
18 that's exactly right.

19 THE COURT: All right.

20 Is there anything you want to say about that,
21 Ms. Glaser Dauermann?

22 MS. GLASER DAUERMAN: I believe we've said
23 essentially everything we need to say in our papers, but I'll
24 just say this, that the defendant played a very important role
25 in the conspiracy and he was an active member and touched a

1 significant amount of the conduct involved in the conspiracy,
2 so that's why we have taken the position that we did.

3 THE COURT: All right. Well, I accept the
4 pre-sentence report, except for the application of that
5 three-point enhancement.

6 MS. NEWMAN: Your Honor, if I then may -- I'm sorry,
7 Your Honor, if I may then make a record?

8 THE COURT: Sure.

9 MS. NEWMAN: Because the Second Circuit will then
10 say, You didn't make a record, Ms. Newman. So I want to be
11 specific as to what statements in the PSR that I object to
12 most, in that general term. I'm not going to go through all
13 of them. I know that the Court has read my papers and I think
14 that they are very explicit and set forth the objections, but
15 there are objections that I think are just so wrong -- their
16 statements are just so wrong that they need to be corrected
17 least the Court take them as fact and then influence the
18 Court's decision.

19 So it's important to note, as the Court did, what my
20 client pled to and what he didn't plead to on Count One, as
21 the Court has said, but it's also significant for the Court to
22 understand that on the indictment on page two, which in
23 paragraph four through seven it names specifically the
24 defendant and relevant entities and individuals and of those
25 we just have Mr. Geykhman and Coconspirator One which we have

1 identified is the physical therapist. We have also identified
2 that the recruiter, who was another physical therapist, a
3 Mr. Elsanna (ph) who was a cooperator, indeed we would agree
4 was involved in this. So what I just want to point out is the
5 narrowness of this indictment.

6 With respect to him being the critical player, the
7 Court is well aware that everybody in a conspiracy plays a
8 role and to the extent that that role is critical every role
9 is critical, but of all the individuals in this case who
10 played a role as to those that are named as what I just
11 pointed out, Mr. Geykhman could easily have been replaced.
12 The physical therapist could only be replaced by another
13 physical therapist but a physical therapist was needed, and
14 Mr. Geykhman on the other hand -- and Elsanna was needed
15 because he was the recruiter for the therapist.

16 So as to the extent that Mr. Geykhman, yes, did
17 everything he said he did and admitted it in detail, that is
18 something somebody else could easily have done.

19 THE COURT: I think I understand. Just to be clear,
20 I imagine -- and I will let the Government respond -- I
21 imagine the Government is referencing some of the conduct in
22 connection with Count Two as relevant conduct; is that right?

23 MS. GLASER DAUERMANN: Count Two is included in
24 relevant conduct, yes, Your Honor.

25 THE COURT: And I just -- because I wanted to remind

1 myself of what it was that Mr. Geykhman said about what his
 2 role was; he said he participated with others in a scheme in
 3 which range of motion test result reports were sent to a
 4 physical therapist who signed the reports as though she had
 5 performed the test herself although she had not done the
 6 testing. A bill for the test would be sent to the no-fault
 7 insurance carrier of the patient who was tested and the
 8 insurance carrier would then send the physical therapist money
 9 that was due for the testing and then that money was
 10 distributed among the co-conspirators, and Mr. Geykhman said
 11 that he had the tests picked up and taken from the physical
 12 therapists but did not run the office.

13 His job was to make sure that the tests were picked
 14 up and brought to the office. And then Ms. Glaser Dauermann
 15 just put on the record that the Government would prove that
 16 they were no-fault insurance companies which are healthcare
 17 benefit programs pursuant to statute.

18 That's just the conduct to which he pled guilty. I
 19 don't know if there is any response that you want to make to
 20 counsel's -- what counsel said.

21 MS. GLASER DAUERMANN: Yes, Your Honor, just very
 22 briefly. We would just note that the defendant makes a big
 23 point of the fact that he was the one person who was the front
 24 man, the gofer, the trusted man for this kind of shadowy
 25 figure. He claims to have been replaceable, but this man that

1 counsel has described does not sound like the kind of man who
2 would trust just anybody. So the defendant -- even in the
3 version of the facts that the defendant is presenting, it
4 sounds like the defendant was quite a critical individual
5 indeed.

6 We have some additional thoughts as to what
7 Ms. Newman has said. She's talked about other government
8 cooperators. The Government has never confirmed whether or
9 not these individuals are cooperators. In terms of the
10 remaining comments that Ms. Newman made, I believe our papers
11 essentially address those factual issues.

12 THE COURT: Anything else you want to say about
13 that?

14 MS. NEWMAN: No, I think that the Court is accurate.
15 So I just wanted to correct, essentially he wasn't a
16 recruiter, he didn't do the billing -- he was aware of it, I
17 don't want to be misunderstood. It's one thing -- and I think
18 that's the confusion here, it's one thing to equate knowledge,
19 like a secretary has knowledge -- at least mine, of everything
20 I do, I hope, better than I do sometimes -- but that's not the
21 manager, the one directing it. It added a distinction, it
22 wasn't knowledge; it was a distinction as to the role that he
23 was doing and that's it.

24 THE COURT: Well, let me just clarify. It's not
25 your position that he came up with this idea, is it?

1 MS. GLASER DAUERMANN: Not at all.

2 THE COURT: And it's also not your position -- is it
3 your position that he actually went out and recruited people?

4 MS. GLASER DAUERMANN: It's our position that people
5 came to him and he in inducted them and further recruited
6 them. I used the term recruited for what he did, but I agree
7 that he did not go out, pound the pavement and find the
8 people.

9 THE COURT: So please correct me if I'm wrong, and I
10 have to say I did have a little bit of trouble -- I remember
11 the plea, but when I got all of these letters I did have a
12 little trouble trying to separate out what was what. I mean,
13 there's a reason why you agree that the three-point adjustment
14 doesn't apply; correct?

15 MS. GLASER DAUERMANN: That was a decision that we
16 made during plea negotiations.

17 THE COURT: Right, but I think when you're saying
18 recruiting you are not saying that he went out to different
19 clinics and said would you like to participate in this; I
20 think what you're saying is that someone else did that, sent
21 them to the defendant who then continued in this process to
22 get whoever these people are on board. Is that right?

23 MS. GLASER DAUERMANN: That's correct, Your Honor.
24 People would hear via word of mouth that they could make some
25 extra money by speaking to the defendant, and participating in

1 this scheme, and they went to the defendant and the defendant
2 took it from there.

3 THE COURT: Okay. And then, the other thing just
4 since we're on this topic, the first count, the count to which
5 he pled guilty, that involves more than one physical therapist
6 and insurance company?

7 MS. GLASER DAUERMANN: The specific scheme to which
8 the defendant -- the conspiracy to which the defendant pleaded
9 guilty was a conspiracy between himself and the one physical
10 therapist charged. We believe the scheme itself was far
11 broader than that, but the conspiracy as charged was between
12 the defendant and CC 1.

13 THE COURT: Okay. Anything else that you wanted to
14 say about that, Ms. Newman?

15 MS. NEWMAN: No, I think the Court is aware of now
16 the major thrust of the objection to the factual statements in
17 the PSR so I rest on my papers and I need not repeat them
18 because I think it's all been said. Thank you.

19 THE COURT: Okay, surely. Okay.

20 As I said I did review all of the submissions, but I
21 will definitely hear from the parties and from Mr. Geykhman,
22 if he wants to say anything. And I will do it in this order:
23 first Ms. Newman, then from the Government and then from Mr.
24 Geykhman, if he wishes to make a statement.

25 Ms. Newman, what else if anything would you like to

1 say?

2 MS. NEWMAN: Thank you, Your Honor.

3 Again to put it into context, I don't think anybody
4 really disagrees to some extent of what Mr. Geykhman's role in
5 the offense was; I think it's more the language used to
6 describe it. So with that said, for example, he was directed;
7 he didn't direct therapists. It was part of the agreement
8 that was first entered into, it was our position that they
9 were recruited by the other therapists and they came -- but
10 that's just the language.

11 So let me then direct my attention to even the
12 basis -- I want to skip over some of my comments because
13 they're superfluous at this point. Okay, let me go to our
14 variance argument --

15 THE COURT: I'm just going to remind both sides --
16 and maybe this is just me -- just slow down a little bit. I
17 just want to make sure our court reporter can get everything,
18 and I think it's okay if you want to remove your masks for
19 making statements. I don't know if everybody's vaccinated,
20 it's entirely up to you, but sometimes it's a bit easier.

21 MS. NEWMAN: Thank you.

22 THE COURT: So I'm not going to --

23 MS. NEWMAN: Your Honor, I truly appreciate it.
24 Believe it or not, I've had a hearing loss I think. I want
25 you to know I think, I haven't gotten it tested, but it's

1 because I don't hear that well in court anymore so I think it
2 and it may be the masks. But no, I feel safer being advanced
3 in age but we won't say how advanced. Okay?

4 THE COURT: No, we won't.

5 MS. NEWMAN: The variance arguments we have to begin
6 by just the loss calculation argument that I advanced, that I
7 really do think it's appropriate in this case. Certainly
8 judges have made comments about that the loss guidelines in
9 many of these cases -- and I believe this is one, is just a
10 poor proxy for the defendant's real culpable conduct here.
11 And I say that because here, remember, he picked up boxes;
12 they weren't medical records, they were tests.

13 Now, I can describe the range of motion test, which
14 is a machine, and they do -- you know, they do various pushes
15 and pulls and a computer sheet emanates and then there's a
16 signature who performed it, and basically the fraud was a
17 physical therapist didn't perform it, a technician performed
18 it. Not that a technician can't perform it, but the
19 Government's position is simply that the insurance company
20 would not have paid if a technician only had performed it, but
21 there is no question there is a fraud because the therapist
22 signed it and didn't perform it.

23 So there's no question about the fraud, but then we
24 go to what kind of control? And he didn't control the number
25 of tests, he had no understanding. There was a box, as the

1 Government suggests, that he called the driver to pick up and
2 deliver. Even if he had opened the box, but he never had the
3 box, but he wouldn't know one test from another other than
4 that they were called range of motion and function capability.
5 So they are -- to an extent that I guess they are medical
6 records, but it's the -- I want the Court to understand they
7 were very narrow, they were just tests that had to be signed.

8 THE COURT: Feel free not to answer this question if
9 you can't or don't want to, but how did this start?

10 MS. NEWMAN: Oh, Your Honor, this kind of fraud
11 having been around the block a few years --

12 THE COURT: I want to know how he got started in it.

13 MS. NEWMAN: Oh, okay. So Mr. Safer, who was
14 involved in many frauds --

15 THE COURT: And who is deceased; is that correct?

16 MS. NEWMAN: Yes, he is now deceased. And there are
17 others involved in this fraud, from the medical aspect of it,
18 that my client had no -- and certainly would not have had any
19 interest in or exposure because that would be the normal way
20 that these frauds are conducted that they're compartmentalized
21 so that one doesn't know about the other.

22 So, in any event, he had a serious gambling and drug
23 problem --

24 THE COURT: I remember. I remember now.

25 MS. NEWMAN: Mr. Safer was his supplier and his

1 bookie, so to say, and they would go to Atlantic City together
 2 and he owed him all of this money, and so Mr. Safer says, you
 3 know, I've got an idea for you, why don't you -- because he is
 4 a trustworthy, responsible person. It's not good for this
 5 crime, but it is for other aspects of his life. And, I've got
 6 an idea, you can get rid of your debt to me and why don't you
 7 just do this, and it was -- it seemed like a good idea, but
 8 needless to say, as you can tell from Mr. Geykhman's letter to
 9 the Court, he recognizes -- and he recognized soon thereafter,
 10 this was not such a good idea but he certainly wasn't going to
 11 pull out in light of the connections that Mr. Safer had.

12 But there's no question that this kind of fraud has
 13 been around for quite a while. I've had other cases many,
 14 many years ago with this and they continue to pop-up about
 15 these no-fault insurance cases.

16 THE COURT: Well, I'm definitely aware of those. I
 17 had forgotten for a moment how it was that he became involved
 18 in it.

19 I'm sorry to interrupt, go ahead.

20 MS. NEWMAN: That's fine. So that's how the
 21 involvement -- and he continued to gamble. I just want it
 22 clear that he's not trying to minimize anything that he did.
 23 He's not trying to minimize that he continued to use drugs,
 24 which of course then only enhanced the amount of money that
 25 was due and so money never really got to his fingers. There

1 was a ledger that went down.

2 Okay. So when we talk about a loss that was an
3 18-level increase, which is driving this guideline, right, we
4 have to look at what is it about and how was it he drives it?
5 He didn't control the therapists and the amount of therapists.
6 He didn't control the number of tests and he didn't control
7 the amount of money that would be collected. He got his small
8 share. That's what he did. He didn't -- so I just want the
9 Court to know that's the basis. And the basis that we're
10 saying isn't just because I'm saying it. You know, Judge
11 Rakoff has said that there's a difference -- I'm sorry --

12 THE COURT: I've read it.

13 MS. NEWMAN: But it wasn't Judge Rakoff, it was
14 Judge Lynch who said there's a difference that we should
15 consider because it doesn't necessarily -- not for everybody
16 does it equal the conduct. And, so -- and this is well-known
17 in this circuit. So that's how at first we think that a
18 variance should be applicable there.

19 And talking of Judge Rakoff, it was Judge Rakoff
20 which I quoted on page 11 of my sentencing memo that talked
21 about how much background and character are important in a
22 sentencing decision. They are so important in life and
23 they're important in a sentencing decision which is one of the
24 most important things that he -- that my client is going to
25 face.

1 So we know a lot about his background and we know
2 that he was an immigrant from what -- and back when it was the
3 USSR, and we know what's happening now and that they're trying
4 to take back the Ukraine, and he's in fact, as I indicated, a
5 volunteer -- immediately. Not because of this case, it has
6 nothing to do with this case, but being somebody from Ukraine,
7 he -- you know, he had a somewhat different childhood as an
8 immigrant. His parents divorced.

9 His father could not make it here, had difficulty
10 making it and was -- used alcohol. It was certainly something
11 that he was predisposed to. We know that his brother has a
12 problem with drugs, and a cousin. Now, that doesn't excuse
13 it, it kind of explains that this is somebody who needs
14 treatment and towards that I would like for the Court to
15 understand when he was first arrested he mentioned, and we
16 called Pretrial Services -- and I understand it's the middle
17 of COVID, and they're saying really? Yeah, how would you like
18 me to get you this, I have a long list of people who now are
19 using and in dire need of this treatment that we can only do
20 virtually, right, and there's a long line. He seemed to be
21 okay and he was.

22 He stopped everything to his credit and he is okay,
23 but he recognizes and he has gone to AA for some treatment to
24 see what he could do. He doesn't want to fall back. So what
25 kind of stresses? This is the most significant stress in his

1 life and he has not reverted to gambling, that high, and he
2 hasn't reverted to drugs. So he's well on his way, we have to
3 say that.

4 His mother had an accident when he was in tenth
5 grade, and as is his nature which is clear from all the
6 letters that the Court has received, he is somebody who puts
7 himself last and everybody else first. I was amazed that
8 somebody who went to Midwood -- I grew up in Brooklyn, so I
9 know Midwood which was one of the neighborhood high schools --
10 you don't quit high school. You know, it's just that
11 immigrant philosophy. We're going to be better, we're going
12 to better, the next generation, but he felt he had no choice.
13 His mother almost died, you know, became crippled, and his
14 stepfather was not bringing in enough -- his mother had
15 worked, which was a needed income, and he took it upon himself
16 to leave school.

17 He had dreams of going to Brooklyn College. He was
18 doing well in school and he -- you know, that was not a good
19 decision because he floundered from there on. He tried being
20 a barber and he tried various -- but it never took because he
21 always felt inadequate. And this is another thing that I've
22 spoken to him that he needs to get therapy and I believe that
23 his wife agrees.

24 So he meets the love of his life and Julia Geykhman
25 meets the love of her life, as she says, and they married.

1 But it is a rocky marriage. Not because they don't love each
2 other, but because of his problems. So it ruined his
3 marriage, but the saviour in his life is his children. So,
4 2008, his son is born and thereafter he becomes the person who
5 is the primary caretaker of the children. He can't contribute
6 like his wife, who rises the ladder and becomes a successful
7 attorney. When I read her letter I must tell you I cried. I
8 still cry, thinking about it, because I think of all that my
9 husband did for me and unless you live life like that and have
10 that experience, you know how much they've given up.

11 So his children are a credit to them both and he
12 would tell you that. He would never take full responsibility.
13 That's just his nature. But others around say it's him
14 because he's the primary caretaker but it's not just -- you
15 know, I'm going to drop you off at ice skating, I'm going to
16 drop you off -- no, he's there all the time. He's with the
17 teachers, he's with them with homework. He is with them at
18 all times. He takes this, as he should, extremely serious.

19 So I took offense as unemployed. Forgive me, but I
20 took offense. I was at one point a stay-at-home mom and it
21 ain't easy, so.

22 THE COURT: I don't think they meant it that way. I
23 saw the clarification in the Probation report, I think it just
24 refers to whether you have a job outside of the home.

25 Am I right about that?

1 MS. BAUMANN: That's correct, Your Honor.

2 THE COURT: It might be something to think about in
3 the future, but that's the way I understood it.

4 MS. NEWMAN: I understood, and I explained that. I
5 took offense to it personally. I understand that -- because I
6 do think they earn money in the sense of -- and he was earning
7 his room and board in a sense.

8 We also know that his marijuana addiction that began
9 when he was 14 does affect the brain, so people who say
10 marijuana is nothing should read the science and the medical
11 reports; when it starts as a teenage and becomes an addiction
12 it affects the brain and changes the brain. That's what the
13 experts tell us, and he then went to cocaine and alcohol. So,
14 what we understand from the background doesn't -- it just
15 gives us some understanding, but as far as the true character,
16 who is this individual? Who is he? Does he have integrity as
17 to other things? Is he a good person as to other events in
18 his life?

19 Is he someone that can be trusted otherwise? There
20 is -- it's true, there was a side of Mr. Geykhman because of
21 his background and his own shame in not being somebody
22 successful in the eyes of others because of monetary reasons,
23 that is true. It led him to do things that he is very
24 shameful of, but that doesn't mean it describes all of him.
25 That does not equate to who he is, and when we look at that

1 and we look at how contrite he is, we know that he has the
2 minimal risk of recidivism, close family ties, his age, his
3 criminal history category one, nonviolent offense,
4 contributing member of society and great remorse.

5 So I want to emphasize and again I would point the
6 Court to page 31, last paragraph, of my sentencing memorandum
7 which I think accurately states from my notes of my
8 conversations with the Government, but -- so I do think he has
9 really done more than normal in acceptance of responsibility.

10 THE COURT: I am so sorry to interrupt you.

11 MS. NEWMAN: Sure.

12 THE COURT: I realize that I meant to ask about this
13 before, do you have an unredacted page 31 of your submission?

14 MS. NEWMAN: Yes, that's what --

15 THE COURT: For some reason I don't have it and if
16 you could get it up to me? I meant to ask about that before.

17 MS. NEWMAN: Sure. I'm sorry.

18 THE COURT: No, no, no.

19 (Counsel approaches.)

20 THE COURT: I just want to take a look at it.

21 Is it marked, Ms. Newman?

22 MS. NEWMAN: No, I did not mark it up, but it's the
23 last paragraph on page 31. It makes reference that it would
24 be redacted.

25 THE COURT: I was aware of this in substance but I

1 wanted to make sure. Thank you.

2 MS. GLASER DAUERMANN: Does Your Honor have the
3 unredacted version of the Government's response?

4 THE COURT: I think I do. I had made a note to
5 myself, but let me double check. I think I do.

6 Which page was it on?

7 MS. NEWMAN: Mine?

8 THE COURT: No, in the Government's.

9 MS. NEWMAN: I believe it was --

10 THE COURT: I think it's on page five, maybe.

11 MS. GLASER DAUERMANN: I believe it's footnote three
12 on page five.

13 THE COURT: I think that's something different.
14 That has to do with this question but there is a reference to
15 it in that paragraph, that proffer.

16 MS. GLASER DAUERMANN: Yes, it's page five, the
17 second paragraph.

18 THE COURT: Right, right, right.

19 MS. GLASER DAUERMANN: Thank you.

20 THE COURT: I apologize for that. I just wanted to
21 make sure -- I knew about it, I just wanted to make sure I had
22 it all.

23 Go ahead.

24 MS. NEWMAN: I will send it to the Court in case the
25 Court doesn't have it in unredacted. I thought I did, but --

1 THE COURT: Do we have an unredacted? Is it filed
2 on this docket?

3 MS. NEWMAN: No, I sent it by --

4 THE COURT: Oh, we might not have it.

5 MS. NEWMAN: I did e-mail it, but I did not -- I
6 know because I didn't file an unredacted under seal.

7 THE COURT: That's okay, we probably do have it.
8 It's not very long and I read it, I certainly knew about it,
9 so I must have seen it somewhere.

10 MS. NEWMAN: If there's a problem just let me know
11 and I'll send you a new one.

12 THE COURT: We'll let you know. I think we probably
13 do have it. Anyway, sorry about that. Go ahead.

14 MS. NEWMAN: I also wanted to indicate that the
15 language uses -- as I mentioned, it says that he laundered the
16 proceeds, it's a conspiracy. He didn't go to the bank, I just
17 wanted the Court to be aware, and he didn't direct or go to
18 the bank or anything like that which I think it's important.

19 So all in all, Your Honor, I think when we ask for a
20 sentence of 20 months it's within that which is the range of
21 comparable sentences that are given for comparable frauds.
22 And I often think about long prison sentences and 46 months
23 for my client, even at the low end, is extraordinarily long in
24 light of how his relationship with his children and it's
25 extraordinarily long for his children. We are not asking for

1 a departure, this is not a family circumstance for departure,
2 this is not that at all. It's a matter of how it affects his
3 children emotionally and him emotionally and that's a
4 punishment, that's what we're saying.

5 And as far as deterrence, I just question that
6 because these frauds repeat and repeat and repeat; it's not a
7 deterrent. What is a deterrent, frankly, and what the
8 academic research demonstrates is that when somebody is
9 punished and we're talking about collateral consequences of a
10 felony conviction which are extensive, when we talk about
11 forfeiture and the amount that is punishment, it inhibits the
12 ability to earn when it pertains to what for him is an
13 enormous amount of money.

14 Although, I have to say when you're talking about in
15 comparison to what the Government alleges is this fraud and
16 the amount, his is just -- you know, it's less than 3 percent
17 so it's a pittance. But that's not to him. To him it's an
18 enormous amount and it's punishment. And it's restitution,
19 which I understand we'll talk about later, but in any event
20 restitution is not applied here. All of this on top of this,
21 all of these things, and nonetheless we're not saying that he
22 shouldn't do -- have some punishment. We're not saying that,
23 Your Honor.

24 And so this, in that community, is enormous when you
25 talk about deterrence but he's not leaving the community. So

1 you're talking about somebody who is there well-liked and
 2 spreads the word, right? Don't think you're going to get away
 3 with this; look at me, look at what I've done, look how it
 4 affects my family which is the most important thing to him.
 5 So this -- a sentence of 20 months is not a slap on the hand.
 6 It is not. Not in the reality of this case.

7 When all things are considered, I think a sentence
 8 of 20 months is really a reasonable request and it is a
 9 request that is more than sufficient to meet the goals of
 10 sentencing here. And it is this individual, not the people
 11 outside, that this Court is sentencing and I think the Court
 12 has a very good idea of Mr. Geykhman from all the letters that
 13 the Court has received and I know that it has read.

14 If there's any other questions I am happy to answer
 15 them.

16 THE COURT: No, I thank you for your presentation.
 17 Does Government want to expand upon their letter?

18 MS. GLASER DAUERMANN: Yes, Your Honor, just very
 19 briefly and then hit a couple of the points that Ms. Newman
 20 raised.

21 Your Honor, the Government's sentencing submission
 22 is clear, the PSR makes clear, that the defendant was a
 23 critical piece of this criminal conspiracy. He was the one
 24 running the show on a day-to-day basis. Whether or not there
 25 was a shadowy figure in the background, the defendant was not,

1 to use his own words, a puppet. He deliberately made the
2 decision to commit this crime for the sake of money. He put
3 his family to the side and he went ahead and did something
4 that he knew could result, if things went badly, in him being
5 taken away from them. So this is not someone who is kind of
6 being pushed around by outside forces. This is a man who, on
7 of his own volition, decided to participate in this criminal
8 conspiracy for years.

9 THE COURT: For years?

10 MS. GLASER DAUERMANN: Although the scope of the
11 conspiracy charged in the indictment is only very brief, as
12 the PSR set forth, he was involved in this since at least 2017
13 and it didn't stop until he was arrested. It didn't stop when
14 Safer died. It kept going. And so the defendant has been
15 involved in this for a very long time, he was an important
16 part of it, and this is not the first time he was accused of
17 having to do with healthcare fraud.

18 THE COURT: That was a civil case, wasn't it?

19 MS. GLASER DAUERMANN: There were two civil cases.
20 There was one early on in the early 2000s and then he was
21 accused of it again in 2013.

22 THE COURT: Were those default judgments?

23 MS. GLASER DAUERMANN: There were. There were a
24 number of defendants and nobody appeared which is fairly
25 typical for those kinds of lawsuits.

1 THE COURT: Do you think that's something that I
2 should take into consideration?

3 MS. GLASER DAUERMAN: I think it's relevant for the
4 Court's information. It's on the public docket, the Court can
5 consider it. We're not asking Your Honor to rely on it in
6 terms of sentencing, but in terms of the recidivism question,
7 you know, this is not the first time that the defendant -- I'm
8 not saying that he did or did not do those things because --

9 THE COURT: I will say I don't really see that as
10 the -- it's sort of framed in terms of prior behavior, but I
11 don't think it's entirely fair in the context of a civil case.
12 I'm not accusing him -- I just don't see it in quite the same
13 way. I mean, I noticed it, but I don't -- and I don't think
14 you're asking me to consider it as prior criminal conduct.

15 MS. GLASER DAUERMAN: That's absolutely correct.

16 THE COURT: I do have a question for you, though,
17 because I think it's a fair point and this is always the case
18 in violations like this, is that the guidelines there almost
19 exclusively loss driven, is that right? And I'm just
20 interested, since you're asking for -- what is a substantial
21 sentence? It's driven by the loss created by all the
22 participants in this scheme; is that correct?

23 MS. GLASER DAUERMAN: That's correct.

24 THE COURT: I mean, is it your position that every
25 person -- that the loss amount is an accurate reflection of

1 what this defendant -- I guess it is, the fact that he
2 deserves that kind of sentence?

3 MS. GLASER DAUERMANN: Yes, Your Honor, and I can
4 speak to the loss issue. The one instance that was charged
5 this indictment was one of at least eight that the Government
6 knows about and has discussed with defense counsel. It
7 happened over and over again, sometimes with the same physical
8 therapist and then sometimes there were other physical
9 therapists who joined and, you know, did their eight to ten
10 weeks of signing false documents and then stopped. The
11 defendant was the one, for each of them, who brought them into
12 the scheme -- once they approach him, he brought them in. He
13 was in charge of getting the weekly boxes of tests to them to
14 sign.

15 He was the one who saw everything that was deposited
16 into their bank accounts. So, although the defendant might
17 not have decided how many tests to send that week, the
18 defendant was aware of the amount of money that each one of
19 these individuals were going to steal from the insurance
20 companies, he discussed with them the amount of money that
21 they could expect to make and that they would be getting 10
22 percent of what was taken in. He --

23 THE COURT: What did he get, 180,000?

24 MS. GLASER DAUERMANN: That's what we agreed with
25 defense counsel, based on his proffer to the Government.

1 But in terms of what kind of money that was involved
2 in the conspiracy, the defendant was the one who -- and there
3 were texts to this effect that were turned over -- would text
4 the physical therapist and say, you know, X amount of money
5 was deposited this week, you can take your share, your share
6 is X amount. And that happened over and over and over. And
7 so the defendant, regardless of whether or not he controlled
8 how many medical records were being generated, he certainly
9 knew exactly how much money was being stolen and that is
10 essentially what the loss is a proxy for, it's the size and
11 scope of the scheme.

12 And in this case the defendant was well aware that
13 what he was essentially running on a day-to-day basis was a
14 very significant scheme that involved millions and millions of
15 dollars, nearly 7 million is the loss amount that was agreed
16 on in this case, and we do believe that the loss is a proxy
17 for a very fair approximation of the scope of this scheme.
18 This was not a small scheme, this was not a short scheme.
19 This was something that went on for years and it involved a
20 significant amount of money, a significant amount of people, a
21 significant number of patients.

22 You know, we haven't talked about the patients at
23 all because the Government is not alleging that there was
24 fraud on the side of the patients. But, you know, there were
25 a number of claims involved and a number of people involved,

1 and the defendant was aware of the scope of the scheme and he
2 deliberately decided to stay. Whether he felt like he
3 couldn't leave or not, it was his decision to stay, it was his
4 decision to take that risk.

5 So that is why we believe that the loss is
6 appropriate as a proxy for the scope and it is an appropriate
7 way of measuring the seriousness of the scheme.

8 THE COURT: Okay. I cut you off and I didn't mean
9 to. Is there anything else you wanted to say?

10 MS. GLASER DAUERMANN: I just wanted to respond to a
11 couple of other points that Ms. Newman made, that -- that the
12 defendant was essentially someone who kind of got in over his
13 head. He stayed. That's --

14 THE COURT: He stayed.

15 MS. GLASER DAUERMANN: He stayed. And whether or
16 not he felt that he was threatened, he stayed, and he decided
17 to stay because he was making money and because the financial
18 consequences of leaving would be serious. That, we believe,
19 is more than enough reason to hold him responsible for what
20 was a very serious fraud. As for the remaining comments, we
21 will rest our case unless Your Honor has questions.

22 THE COURT: Thank you very much.

23 Do you want to respond at all?

24 MS. NEWMAN: Yes, if I may have a moment with my
25 client.

1 (Pause in proceedings.)

2 MS. NEWMAN: Your Honor, I really have just a few
3 very quick points to make. Again, it's conflating knowledge
4 with control and there's no question -- and we made that
5 clear, that he was aware because he got lists from Mr. Shafer
6 which he then sent. There's a difference between a
7 secretary -- and I'm not saying he's a secretary, it's just a
8 secretary has so much knowledge and that's why I'm using that
9 analogy, and a control in what happens and we certainly
10 wouldn't hold the secretary responsible for all the harm as
11 far as loss -- in loss cases.

12 And so I'm not asking for minor role, I just want to
13 be clear, but I do think that it's not a proxy for when you
14 don't have that kind of control. And the fact that it -- the
15 Government's point is it lasted years, I think we've explained
16 why it lasted years. It wasn't something that was continual,
17 and I think that's clear also, and he did get in over his
18 head. He did, but he also got in over his head because of his
19 drug use and the gambling. And I did want to point out one
20 other point and that is he stayed in through -- almost his
21 arrest. So what is normal in these cases, the case goes --
22 and Mr. Geykhman had nothing to do with this part of the case,
23 it goes to arbitration. Having done personal injury when I
24 first started, and so I have somewhat of an understanding so
25 many, many of them go to arbitration. So the claim is

1 rejected and they go to arbitration or, which often happens,
2 the claimant is sent for an examination by the insurance
3 company. That's just the normal course, okay.

4 So when they win some arbitrations or the attorney,
5 who Mr. Geykhman had known, negotiates the fee -- you know,
6 the claim, the money is sent subsequent to the therapist then
7 saying -- you know, or Shafer saying this was done with a
8 therapist. So after that, there were additional monies that
9 would come in. Even then after the Government submits the
10 objection to Probation that the discovery that I had been
11 asking for throughout the litigation is then produced.

12 This discovery, as the Government indicates, well,
13 they didn't have to produce it because it had to do with text
14 messages between Elsanna and my client with respect to these
15 monies that were coming in and he had first forgotten all
16 about it because, after all, the indictment ends in January
17 2020.

18 THE COURT: Is this related to the money coming from
19 arbitration?

20 MS. NEWMAN: Yes, exactly.

21 THE COURT: Okay.

22 MS. NEWMAN: And so what is clear from those text
23 messages is it was Elsanna who has direct contact with the
24 therapists over this period of time, unbeknownst to us. So,
25 in a way, it showed he wasn't the only one who was so involved

1 in the day-to-day with the therapists because they wanted to
2 communicate to the therapist this money was coming in, the
3 arbitration money, et cetera.

4 Suffice it to say we weren't talking about role. I
5 just want the Court to understand what was happening in this
6 case and the Government says, on page five, footnote three --
7 which I do believe is in any copy that the Court would have of
8 it, the second paragraph of footnote three, is that the text
9 messages that they subsequently gave us during sentencing,
10 after I wrote my sentencing memo, largely pertained to the
11 defendant's conspiracy with the counterparty that the other
12 physical therapist, the recruiter Elsanna, the owner of
13 several clinics that participated in other iterations, also
14 misleading, of a no-fault fraud which was not charged in this
15 case. So their position is we didn't have to have turn it
16 over since those iterations were not charged in this case.

17 THE COURT: Does it make it easier to tell you that
18 that's not really having any effect on my sentencing decision?

19 MS. NEWMAN: Fine.

20 THE COURT: I don't want to cut you off --

21 MS. NEWMAN: No, I don't want to go where it's not
22 necessary. But that was one thing I wanted to say, so it's a
23 matter of control versus knowledge. Knowledge doesn't
24 necessarily mean control. And it is the -- as the Commission
25 has pointed out, that's what the guidelines -- you know the

1 different enhancements in 1B1.1 were geared to do, which was
2 to really punish more the people who had the larger stake, the
3 money in their reward that they were getting. That's why
4 other courts where -- in similar situations, have granted a
5 variance. Thank you.

6 THE COURT: Thank you so much, Ms. Newman.

7 Mr. Geykhman, you have a right to make a statement,
8 too, if you would like. If you want to do that, that's fine.
9 I'm just going to ask that you use the microphone, just make
10 sure it's on.

11 You can move it closer to you if that's more
12 comfortable.

13 THE DEFENDANT: I do want to make a statement. I
14 just want to say that, first of all, I want to apologize to my
15 family, to my children, for my role in this. I wish I could
16 take everything back. Unfortunately, I can't. I love you
17 guys and I'm very, very sorry for everything.

18 And I would like to apologize to the Government and
19 to the victims of this fraud, because there are victims, and I
20 wish I could also take this back and unfortunately I cannot.

21 To Ms. Newman, I would like to thank her very, very
22 much for everything that she's done for me. She's not only
23 been my attorney, she seemed like a friend and nobody has ever
24 fought for me as hard as Ms. Newman, and I appreciate it and I
25 wish I could thank her in other ways but unfortunately I

1 cannot.

2 This does not define me. I can be a better person.
3 I have dreams and I have hopes and I will make sure that,
4 after doing my time, I will have these hopes and dreams come
5 true. That's it, thank you.

6 THE COURT: Mr. Geykhman, thank you so much.

7 Well, sentencing another human being is the hardest
8 thing a judge has to do and this case is no exception. Just
9 so -- and I know the parties are aware of this, that I am
10 considering all of the factors that are laid out in this
11 statute at 18 USC Section 3553(a), which includes the advisory
12 guideline range, to make sure that the sentence that I impose
13 is sufficient but not greater than necessary to meet the
14 purposes of sentencing. Those purposes are that the sentence
15 must reflect the seriousness of the crime, that it must
16 promote respect for the law, that it must be fair and just,
17 that it must act as a deterrent not just to the defendant, but
18 to anybody else that would contemplate participating in a
19 similar offense. The public has to be protected from future
20 crimes by the defendant. I am also mindful of the need to
21 avoid unwarranted sentencing disparities and, of course, like
22 every judge, I consider the individual before me, including
23 his history and the details of the offense.

24 A comment first about the effects on innocent people
25 which, unfortunately, is a byproduct of every criminal

1 enterprise when a person is called to answer for it, that the
2 people who didn't do anything wrong have to suffer. That's no
3 less true in this case. I do wish that people paused to think
4 about this before engaging in criminal conduct; that the often
5 devastating effects on family and on friends, on community,
6 sometimes we don't realize that until it comes time to accept
7 responsibility.

8 I think your expressions of remorse are sincere and
9 having read all of the letters in support of you put by your
10 ex-wife, by your son, made it clear that you play a very
11 critical role in your family and that they love you very much,
12 and I've certainly taken that into consideration. But, again,
13 keeping in mind that's one of the hardest things about this
14 process is that there are so many people that are affected by
15 it.

16 I will say that, whether or not Mr. Geykhman could
17 be replaced is really not the issue to me. I mean, this kind
18 of a scheme which is -- it seems to be rampant, can't happen
19 without participants like Mr. Geykhman. There has to be a
20 person in his position in order for the crime to take place.
21 And it is serious. It's -- it's payment for things that
22 either weren't performed correctly or weren't performed at
23 all, and it diverts resources from people who need them and
24 it's serious.

25 I think the Court does have to focus on the need for

1 deterrence and I have to say I part company with Ms. Newman on
2 that. I think that there is a deterrent effect in a case like
3 this of a penalty and, so, I am mindful of that.

4 On the other hand, I do take into account
5 Mr. Geykhman's personal circumstances and, you know, you said
6 what I was going to say that none of us is defined by the
7 worst thing we've ever done. You're really a young person and
8 Ms. Newman talked about you once had plans to go to Brooklyn
9 College. You could still do that.

10 I think you got your GED; is that right?

11 THE DEFENDANT: Yes.

12 THE COURT: And so it's never too late to make a new
13 start. And, so, I think you can still do that.

14 I also take into account -- it's not an excuse, but
15 it provides context, is that the defendant did struggle with
16 addiction and perhaps that was a driver for this. While I
17 agree that the crime was a serious one, I don't agree with the
18 Government at least in the description of him as sort of
19 running the show. It doesn't appear to me that that's the
20 case without minimizing what he admitted doing.

21 As for the loss, I think everybody agrees the loss
22 amount is what drives the guidelines, the guideline range.
23 And, you know, as in any case, the guidelines are a starting
24 point but they're not necessarily the place to finish. It's
25 certainly true that the loss of this overall conduct is large,

1 but in my view focusing only on a loss would result in a
2 sentence that is not commiserate with the conduct and it would
3 result in a sentence that was greater than was necessary to
4 achieve the purposes of sentencing.

5 So, with all of that being said, after having
6 reviewed the conduct and Mr. Geykhman's background, and I also
7 find his expressions of remorse and regret to be sincere and
8 I've seen some that are sincere and some that are not, I think
9 a sentence of 24 months is the appropriate sentence in this
10 case. It will be followed by two years of supervised release.
11 A condition of that supervised release would be an evaluation
12 for substance abuse and this is laid out in Probation's
13 recommendation, but I will put it on the record so it's clear
14 that he will participate -- and I believe it's something that
15 Mr. Geykhman wants to do as well. So he will participate in a
16 substance abuse evaluation and if it's necessary an outpatient
17 drug treatment program that Probation approves. He must
18 contribute to the cost of the treatment, not to exceed a
19 reasonable amount as determined by the Probation Department's
20 sliding scale for substance abuse treatment services.

21 He will have to cooperate in securing any applicable
22 third-party payment, like insurance or Medicaid, and he will
23 have to disclose all financial information and documents to
24 Probation so that they can assess his ability to pay. During
25 treatment and after treatment, the defendant can't consume

1 alcohol or drugs, or any intoxicants, unless he has a
2 prescription by a licensed doctor and proof is provided to
3 Probation, and he will have to submit to drug testing and
4 alcohol testing to ensure abstinence.

5 There is also a \$100 special assessment and I don't
6 recall if I have signed the forfeiture order yet.

7 Have I done that?

8 MS. GLASER DAUERMANN: I am not sure, Your Honor.

9 THE COURT: But I think that's agreed upon, is that
10 true?

11 MS. NEWMAN: Yes, that is agreed one.

12 THE COURT: So I will sign the forfeiture order if I
13 haven't already done so.

14 We will discuss this issue of restitution, at least
15 sort of in general terms, but I want to notify Mr. Geykhman of
16 his right to appeal. You can appeal if you believe that your
17 plea was unlawful or involuntary, or if there is some
18 fundamental defect in the preceding that you didn't know about
19 when you pled guilty. If you appeal you have to file the
20 Notice of Appeal within 14 days of the filing of the entry of
21 the judgment or within 14 days of any Notice of Appeal by the
22 Government. If you ask, the Clerk will prepare and file a
23 Notice of Appeal for you. If you can't afford to pay for an
24 appeal, or for an appellate lawyer, you have the right to
25 apply for leave to appeal in forma pauperis. That means that

1 you can apply to have the Court waive the filing fee. You can
2 also file on appeal for a court appointed lawyer.

3 Are you moving to dismiss Count Two?

4 MS. GLASER DAUERMANN: I am, Your Honor.

5 THE COURT: Okay, that is dismissed.

6 And in terms of a surrender date, is there a
7 particular facility you want me to recommend?

8 MS. NEWMAN: Yes. Mr. Geykhman is kosher and so I
9 do know Otisville is a place in which they do have a kosher
10 kitchen. They are, in fact, preparing for Passover, I
11 understand. And so we would ask for self-surrender when he is
12 assigned. So we would request Otisville and a self-surrender
13 when assigned.

14 THE COURT: All right.

15 Can we pick a date?

16 MS. BAUMANN: Your Honor, if I may be heard on that?

17 THE COURT: Sure.

18 MS. BAUMANN: I believe my understanding right now
19 as far as intakes or going, it may take up to eight weeks or
20 more than that.

21 THE COURT: That's what I thought, so should we move
22 it to the end of June maybe?

23 THE COURTROOM DEPUTY: June 30th?

24 MS. NEWMAN: I mean, we're waiting for whatever it
25 is -- if it's sooner, they usually let us know, and if it's

1 later, I usually get to them and say, hey, don't forget us.
2 Just so that I haven't missed an e-mail, but of course I
3 invite Probation to please contact us both.

4 THE COURT: Well, why don't we set June 30th for the
5 date and if something happens that it's not ready by then, we
6 extend it.

7 I also do want to thank Probation. I think you had
8 a lot of last-minute work to do to get ready for today.

9 MS. BAUMANN: That's quite all right.

10 THE COURT: I do appreciate it.

11 MS. BAUMANN: I just want to be heard on the
12 restitution, if that's okay. I understand it's not going to
13 be discussed, the amount, but if the Court is going to be
14 imposing an amount of restitution at some point, we would
15 request an additional condition of supervision be imposed for
16 a full financial disclosure just so we can monitor his
17 compliance with it.

18 THE COURT: Sure, I think we can make that a
19 condition -- well, does he have to pay the forfeiture also?

20 MS. NEWMAN: Yes.

21 THE COURT: So do we need to set up a schedule for
22 that or has he already paid it?

23 MS. BAUMANN: He has not already paid it, so I would
24 ask Your Honor to set a schedule for that.

25 MS. NEWMAN: I think usually there's a schedule and

1 I think there's no interest on forfeiture; correct?

2 THE COURT: I do not know the answer to that. The
3 schedule is usually -- I think it's 10 percent of monthly....

4 MS. BAUMANN: Gross monthly income. With our
5 standard language for full financial disclosure, it would be
6 up to the defendant to prove his inability to pay that amount
7 in which we would then readdress the Court for a different
8 monthly payment.

9 THE COURT: Okay. So at least for the forfeiture
10 the schedule will be, upon release, 10 percent of gross
11 monthly income. I think in terms of the restitution, if it
12 works for everybody, I think we have to determine what that
13 amount is, but the financial disclosure aspect of that will be
14 a part of supervised release.

15 I think you probably also need the financial
16 disclosure for the forfeiture as well, is that right?

17 MS. BAUMANN: I don't believe that the Probation
18 Department is able to enforce his payment on that, just with
19 the restitution.

20 THE COURT: Okay.

21 MS. GLASER DAUERMANN: Your Honor, I will note that
22 the financial disclosure to the Government was an aspect to
23 the plea agreement which the Defendant has not yet done,
24 despite the date passing, so I would ask that Your Honor
25 direct him to comply with that.

1 THE COURT: All right. So that's also going to be a
2 condition, his full financial disclosure. Correct me if I
3 don't have all of the language on this right, but that
4 includes advising Probation of any accounts and any employment
5 that you have, whether it's self-employment or any kind of an
6 employment. And would a condition of that also be not to open
7 any new accounts without Probation's knowledge? Is that
8 necessary in a case like this?

9 MS. BAUMANN: That would be at Your Honor's
10 discretion, but it would make sense just because of the
11 commingled income but I would definitely leave it up to Your
12 Honor.

13 MS. NEWMAN: I do not believe that there is any
14 commingled income with respect to his ex-wife. In fact, I'm
15 pretty confident there is no commingling.

16 MS. BAUMANN: There are commingled expenses, which I
17 think is just the concern to make sure -- obviously, Your
18 Honor, we wouldn't be taking into account his former wife's
19 income, but to the extent that they do have some sort of
20 shared expenses in the sense that he has credit cards in his
21 name that she does pay the bill for.

22 MS. NEWMAN: Because there are expenses for the
23 children.

24 But I understand it's Probation's position, and it
25 is common in a fraud case for that to be a condition, so it's

1 a general condition that usually is included so I do not
2 object to it, but I -- and I am happy to hear that Probation
3 understands that the wife's income is the wife's income, et
4 cetera. Whether he may then have a card which he pays because
5 it's the children's expenses, that can well be explained to
6 Probation and they would understand that it's -- you know the
7 distinction. So that would be fine.

8 And I do want to put -- as my recollection, we had
9 sent to the AUSA here in the Eastern District -- I forgot her
10 name for the moment -- those forms, that lengthy form.

11 MS. GLASER DAUERMANN: If that's the case, they
12 didn't reach me. I appreciate you clarifying that.

13 MS. NEWMAN: Okay. If I have it, I can resend it.

14 THE COURT: If it says in the Probation Report that
15 he completed a financial statement -- so that's something
16 different from what they owe you?

17 MS. BAUMANN: No, the personal financial statement
18 that was submitted to us is separate from the financial
19 statement submitted to the Government. I believe the
20 statement submitted to the Government is much lengthier than
21 the statement we have from the Defendant.

22 MS. NEWMAN: It is much lengthier. In the Eastern
23 District they do require this very lengthy, do you have boats,
24 do you have airplanes.

25 THE COURT: And you think you've done that already?

1 MS. NEWMAN: My recollection is he did that. If
2 not, we will do it because we've agreed to do it. By the way,
3 Your Honor, it is part of the plea agreement.

4 THE COURT: Right.

5 MS. NEWMAN: So we don't dispute the need to do it
6 and if we haven't and I confused it with another case, I
7 apologize and I will get that to you right away.

8 THE COURT: All right. I want to make sure that I
9 put what the conditions are for supervisory release, at least
10 in terms of financial disclosure: That he will disclose all
11 employment of any kind; that he will disclose all accounts
12 that he has, bank accounts, credit card accounts; that he will
13 not open any new accounts without Probation's knowledge; and
14 that he will also be required to notify you of what his
15 employment is?

16 MS. BAUMANN: Yes.

17 THE COURT: What about income tax?

18 MS. BAUMANN: Yes, income tax returns would
19 definitely be included on that. If Your Honor would agree, I
20 can certainly provide our standard language after this
21 proceeding today to your courtroom deputy.

22 THE COURT: Okay. I just want to make sure -- I
23 think the Second Circuit is a little picky about this -- I
24 want to just make sure that it's on the record as well. I
25 think I've got it all, I do this on a fairly regular basis and

1 I think we've got the sum and substance of it. I don't see
 2 this as a case where someone is going to go running and
 3 complaining that I imposed a condition on them that they
 4 weren't expecting, but I think I've got everything that you
 5 need, but we'll put that in. And by the way, obviously, in
 6 the judgment if it has a condition that you hadn't anticipated
 7 let me know and we'll fix it. Okay?

8 MS. BAUMANN: That's fine. Thank you, Your Honor.

9 THE COURT: All right. Now --

10 MS. BAUMANN: Your Honor, I'm sorry to interrupt.
 11 If I could just make a suggestion?

12 THE COURT: Sure.

13 MS. BAUMANN: Which, of course, does not need to be
 14 decided today, it could be decided at the time when the
 15 restitution figure is imposed, just considering the household
 16 financial situation, Your Honor doesn't necessarily have to
 17 impose the 10 percent of his gross monthly income. It could
 18 be a certain figure that the parties and the Court agree upon.

19 THE COURT: Okay. And this is for restitution?

20 MS. BAUMANN: That's correct, Your Honor.

21 THE COURT: So I will say that I do not read -- and
 22 everybody can correct me if I'm wrong, the plea agreement says
 23 that the defendant is pleading guilty to Count One which, as
 24 the Government explained, involves this one physical
 25 therapist; correct so far?

1 MS. GLASER DAUERMANN: Correct.

2 THE COURT: And the plea agreement says that -- and
3 one of the penalties is that restitution is mandatory in the
4 full amount of each victim's losses as determined by the
5 Court. I mean, is that what you're relying on? Are you
6 saying they agreed to restitution?

7 I don't think you are, are you?

8 MS. GLASER DAUERMANN: I'm not saying that we agreed
9 to an amount, but we would appreciate the opportunity to brief
10 the issue of --

11 THE COURT: I think that's necessary because you
12 sent me a lot of tables, but I don't know what the calculation
13 is, I don't know -- I mean, I think Ms. Newman makes a fair
14 point that there hasn't been any discovery on it and I
15 believe, and correct me if I'm wrong, but does your
16 calculation involve -- is based on losses in one of the counts
17 to which he didn't plead? I don't know if that's permitted.

18 MS. GLASER DAUERMANN: So if I could just address
19 that for a moment, first the discovery issue. In terms of
20 what the Government has with respect to restitution, we are
21 relying on the figures that were provided to us by the
22 insurance companies.

23 THE COURT: But are they connected with the count to
24 which he pled guilty? That's my question.

25 MS. GLASER DAUERMANN: So what we have received from

1 the insurance companies is each of the companies has provided
 2 us with the loss stemming from each of the eight different
 3 clinics that were involved in the scheme. We would appreciate
 4 the opportunity to brief the MVRA issue, but in terms of what
 5 the Government has, and would be able to make available for
 6 discovery, essentially what we have is the numbers reported to
 7 us by each of the -- either victim insurance companies. Some
 8 of them included a spreadsheet with claim level detail, some
 9 of them did not. We don't believe that that is necessary for
 10 the Court to determine restitution because we believe that the
 11 restitution ought to be determined at the clinic level; just
 12 all of the claims from the clinic are fraudulent and require
 13 restitution or they don't.

14 So, in terms of the numbers that we were provided
 15 from the insurance companies, the only additional material
 16 that we could turn over is the e-mails that they sent with the
 17 numbers and then we could turn over that claim level detail,
 18 but we do not believe that that is either necessary in this
 19 situation or particularly appropriate in the context of a
 20 restitution discussion.

21 THE COURT: Okay. Again, and I apologize if I am
 22 being thick, but I don't understand to what extent these -- I
 23 do agree that they have to be in connection to the count to
 24 which he plead guilty, Count One. Yes?

25 MS. GLASER DAUERMANN: Yes.

1 THE COURT: Okay. I thought the conduct underlying
2 Count One was the one physical therapist; is that also
3 correct?

4 MS. GLASER DAUERMANN: Your Honor, that's what we
5 would ask for the opportunity to brief.

6 THE COURT: Okay.

7 MS. GLASER DAUERMANN: But that's why we provided
8 the information on a clinic-level basis and I would state that
9 Clinic H from the restitution order is the clinic that was at
10 issue in the indictment.

11 THE COURT: Okay. I will say -- and I don't mean
12 this in a mean way -- I don't find those tables helpful at
13 all. I don't know what they -- I mean, it's a bunch of
14 insurance companies with numbers after them, so whether it's
15 discovery or not, I mean, there has to be some kind
16 connection -- but I know you're going to brief it.

17 I'm sorry to give you a hard time about it, but it
18 just wasn't helpful.

19 MS. GLASER DAUERMANN: No, that would be fine, Your
20 Honor. And in terms of the tables themselves, that would not
21 be the subject of the briefing but essentially what the tables
22 are is each insurance company reported to the Government we
23 lost X amount money to Clinic A, Clinic B, et cetera, and so
24 we have provided each individualized information for each
25 insurance company as to how much they lost to each of the

1 clinics.

2 THE COURT: Okay. Now, the other question I ask is
3 that -- what about the question of apportioning liability? I
4 mean, he's not the only -- is that going to be something you
5 will cover in your briefing? He's not the only person, right?

6 MS. GLASER DAUERMANN: We certainly can cover that,
7 but we will be asking the Court to impose joint and several
8 liability with the clinic owners and other members of the
9 conspiracy.

10 THE COURT: And I don't know if you can answer this,
11 but are any of them being held responsible; the clinic owners
12 and all of that? I don't have those cases, I think I have
13 only one other case.

14 MS. GLASER DAUERMANN: I understand. Some of the
15 clinic owners have been charged.

16 THE COURT: And then the other thing I know -- maybe
17 this is not a thing, but do you ever take into account the
18 likelihood that a person could pay restitution in this amount?
19 I mean, it seems like something that they probably won't ever
20 recover.

21 MS. GLASER DAUERMANN: Your Honor, it's tough for me
22 to speak to that. My obligation --

23 THE COURT: It's a practical consideration.

24 MS. GLASER DAUERMANN: I completely understand that.
25 My obligation is to the victims to try to get them back their

1 money as much as I can.

2 THE COURT: It's related to his conduct, right?

3 MS. GLASER DAUERMANN: All of the money that's
4 referred to in the restitution order is related to his
5 conduct.

6 THE COURT: But it all came from that Count One?

7 MS. GLASER DAUERMANN: All of the clinics in the
8 restitution order were connected to the same overarching
9 scheme.

10 THE COURT: I see. Okay.

11 Ms. Newman, I know you have a lot to say about this,
12 but let me just say one thing: I'm going to set a briefing
13 schedule on it and I do think --

14 Saying just give discovery on restitution, I guess
15 you should give them what you have. I don't know how
16 Ms. Newman is supposed to respond if she doesn't -- I mean,
17 the evidence is what the evidence is. If that's what she's
18 got, that's what I'll consider. But I do think it's not
19 really an answer to say you don't have to give discovery. I
20 just don't know how she's going to -- and maybe this is a
21 failure of imagination on my part, but I don't know how a
22 lawyer can respond to it or give advice to her client if she
23 doesn't know if that's all it's going to be.

24 MS. GLASER DAUERMANN: Well, Your Honor, we believe
25 this is a purely legal issue. We've never taken the position

1 that we would not provide discovery as to restitution. I
2 believe that's been assumed, but we've never taken that
3 position.

4 THE COURT: Okay. So I guess the first thing to do
5 then is to set a schedule for when you're going to -- have you
6 turned it over already?

7 MS. GLASER DAUERMANN: We wanted to clarify the
8 issues today before --

9 THE COURT: Okay. All right.

10 So, Ms. Newman, I guess -- I know sort of
11 substantively you have a lot to say about it. For me, it's
12 probably easier if I get the briefing on it. I certainly read
13 everybody's submissions and I think I understand the law on
14 this, but sometimes I think that and it turns out that I
15 don't. But what I'm wondering is, in terms of discovery, a
16 reasonable discovery that will enable you to represent
17 Mr. Geykhman, what is it that you're looking for in terms of
18 discovery?

19 MS. NEWMAN: So with other similar cases, I have
20 received from the Government the letters that were sent to the
21 insurance company, which in one case in particular turned out
22 to be an important issue, but to the letters sent requesting
23 the information and the breakdown of the spreadsheets, which
24 I've also gotten which they've indicated the amount paid, when
25 it was paid, et cetera, whether arbitration, for example. So

1 the fact that A was charged but they received B was also on
2 the spreadsheets that I received in the past.

3 And I think it's important the Court has to know I
4 received zero discovery with respect to any other iteration,
5 as the Government likes to call it, and the only discovery we
6 received is as to Count One which is narrow in scope. I
7 didn't draft it, it is what we have pled to. So that's my
8 position and I would welcome the discovery because I have
9 none.

10 THE COURT: Okay. The other thing, I know this is
11 not civil case, I don't know to what extent you can sit down
12 and work out your differences on this, maybe you can and maybe
13 you can't, but maybe there's a set of facts that you can agree
14 on. But what I think the best thing to do is probably for us
15 to set a briefing schedule, just keeping in mind that -- which
16 I know everybody knows -- that it's the Government's burden by
17 a preponderance in terms of the amount of restitution. I'm
18 just trying to think what... in terms of time, I mean, the
19 statute requires that the date to determine all losses
20 shouldn't be more than 90 days after sentencing.

21 MS. NEWMAN: That number can be enlarged. That
22 being said, it doesn't matter. I think it was two years
23 later, but I --

24 THE COURT: That, I get, but, you know, if we can
25 resolve this within this time, you know, I'm a rule follower.

1 So, how much time -- you submit your briefing and
2 the defendant will respond and you can do a reply, is that --

3 MS. GLASER DAUERMANN: We would appreciate that,
4 Your Honor.

5 THE COURT: How much time would you need?

6 MS. GLASER DAUERMANN: I would ask for three weeks
7 for the Government to submit.

8 THE COURT: So where does that take us, Ms. Green?

9 THE COURTROOM DEPUTY: May 3rd.

10 THE COURT: So May 3rd for the Government.

11 How about you, Ms. Newman?

12 MS. NEWMAN: I don't know how extensive the
13 discovery is and I have... and I'm going to be away and --

14 THE COURT: How about the first week in June?

15 MS. NEWMAN: That would be very helpful. Thank you,
16 that would be great.

17 THE COURTROOM DEPUTY: June 2nd.

18 THE COURT: All right. And then a reply two weeks
19 later?

20 MS. GLASER DAUERMANN: At least. I'm going to be on
21 trial all of June, so -- I'm not going to ask her to be past
22 June, but in that time --

23 THE COURT: How about July?

24 MS. GLASER DAUERMANN: I'm in back-to-back between
25 June and July -- you've got me in July.

1 THE COURT: Yeah, me and Judge Seybert, I think.

2 MS. GLASER DAUERMANN: Yes, definitely.

3 THE COURT: Okay. So --

4 THE COURTROOM DEPUTY: June 16th, Judge?

5 THE COURT: Is that okay for you?

6 MS. GLASER DAUERMANN: I can make that work. Thank
7 you, Judge.

8 THE COURT: Okay. All right.

9 Now, in terms of discovery, when do you think you
10 can get discovery to Ms. Newman?

11 MS. GLASER DAUERMANN: So it depends on what Your
12 Honor believes is appropriate to turn over. Our position is
13 that there is no place here for kind of taking on the
14 individual claims and saying, well, this claim was affected by
15 this and this one wasn't. Either the entire clinic was
16 subject to fraud and every single claim that came from the
17 clinic was fraud or it wasn't. There are no claims that are
18 going to be at all substantively different from any other
19 claim, so --

20 THE COURT: Again, not to -- maybe it's a dumb
21 question, but it's your position that there are no claims from
22 these clinics that would be legitimate; correct?

23 MS. GLASER DAUERMANN: That's correct.

24 MS. NEWMAN: Your Honor, if I might?

25 THE COURT: You still have the burden of proof by a

1 preponderance --

2 Go ahead.

3 MS. NEWMAN: How would I know that? I have no
4 discovery as to that and I don't agree with them because from
5 what I could tell from the little snippet of that late
6 discovery, that indeed some of the clinics commingled; in
7 other words, they had legitimate physical therapist practice,
8 I think, and then they commingled this with their other
9 monies. I just don't know. I've had none of the discovery as
10 to any of the other clinics which, as you know, my position is
11 they don't apply anyway.

12 THE COURT: Well, I think it's sort of a -- it's
13 sort of a combination of two things. You've got the burden by
14 a preponderance, and obviously you're going to have to
15 persuade me, so I think you have to give counsel the
16 information that you have that forms the basis for your belief
17 that you've met the burden. It's hard for me to say what it
18 is, I don't know what it is. I don't know what you've got,
19 but you are good lawyers. I think Ms. Newman could give you a
20 list of things she's looking for. It might be a place to
21 start. I just don't know. I took the plea in the case, but I
22 don't know the ins and outs of the case.

23 MS. GLASER DAUERMANN: I understand. And just to
24 clarify, I'm not sure why Ms. Newman thinks that there were
25 legitimate physical therapists. It is the Government's

1 position that every claim that was reported to the insurance
2 companies from each of these clinics were fraudulent and --

3 THE COURT: Is it your position that they were
4 opened for the purpose of -- that the clinics were opened for
5 the purpose of, you know, making these fraudulent claims?

6 MS. GLASER DAUERMAN: Either opened or resurrected
7 from dormancy, yes, Your Honor.

8 THE COURT: All right. Well, that will be part of
9 the evidence of the case and she's entitled to it. Okay?

10 MS. NEWMAN: But just so the record is clear, it is
11 our position that none of that is relevant because -- except
12 as to Count One, which I do admit we do have records as to
13 Count One.

14 THE COURT: Okay.

15 MS. NEWMAN: So as to that I'm not questioning Count
16 One, it's a little over a million dollars, and we have the
17 records for that and we agree on the amount, it's just a
18 mathematical calculation.

19 THE COURT: Yes, that is true. I didn't mean to get
20 away from this -- sort of the more broad question is, what
21 exactly -- when someone pleads guilty to one count, what can
22 the restitution order encompass? The Circuit, at least in the
23 90s, said simply agreeing to make full restitution for loss
24 suffered -- which I don't even know is in the plea
25 agreement -- does not mean that the defendant agrees to pay

1 for any losses that exceeded those caused by the offense of
2 conviction. So maybe there is something that's happened more
3 recently than that. Like I said, that's why we're briefing
4 it.

5 All right, so I think we've done all of that.
6 Anything that I've forgotten to do or that anybody else wants
7 to raise?

8 MS. GLASER DAUERMANN: Your Honor, just if you would
9 not mind, for the record, stating the amount of forfeiture you
10 are imposing.

11 THE COURT: Yes. So in January I signed the
12 restitution order which was in the amount of \$180,000. There
13 is no dispute about the amount; correct?

14 MS. NEWMAN: No.

15 THE COURT: All right. Anything else that we need
16 to do?

17 MS. GLASER DAUERMANN: I may just not have heard
18 this, but I moved to dismiss Count Two. I'm not sure whether
19 Your Honor granted the motion.

20 THE COURT: I think I did, but if I didn't, I'm
21 doing it now.

22 MS. GLASER DAUERMANN: Thank you, Your Honor.

23 THE COURT: Anything else anybody wants to say?

24 MS. GLASER DAUERMANN: Nothing further from the
25 Government. Thank you.

1 MS. NEWMAN: Nothing from the defense. Thank you
2 very much, Your Honor.

3 THE COURT: Mr. Geykhman, I do wish you and your
4 family the best, okay?

5 THE DEFENDANT: Thank you, Your Honor.

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7 (Matter adjourned.)

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